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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Docket No. 11-169, PP Docket No. 00-67.

Dear Ms. Dortch:

NCTA writes in response to a letter filed by Boxee in this docket on December 21, 2011.¹ Boxee asserts that basic tier encryption would damage the market for its Boxee Live TV product (which is not yet publicly available) and asks that the Commission not proceed with the proposed rule change without also adopting AllVid rules.² For the reasons set forth below, the Commission should reject Boxee's request and move forward expeditiously to permit encryption of the basic service tier in all-digital cable systems.

As an initial matter, it is doubtful that encryption of the basic tier will significantly affect the market for the Boxee product. As Boxee notes in its letter, and as it emphasizes in its marketing materials, the Boxee product includes an adapter that will work with an over-the-air ATSC antenna,³ so Boxee customers can access broadcast signals without subscribing to cable service. In fact, Boxee is marketing Boxee Live TV as a cord-cutting product. Boxee's CEO Avner Ronen noted in a company blog post titled "Boxee Live TV is coming. Time to cut the cord" that:

¹ See Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Dec. 21, 2011) ("Boxee Letter").

² *Id.* at 1.

³ See *id.*; see also "Still Spending Too Much on Cable TV," available at <http://www.boxee.tv/live>.

The problem with canceling your cable subscription and relying just on the Internet has been the lack of live sports, local news, special events, and live TV shows (think Dancing with the Stars). But these things are all available on broadcast TV channels like ABC, CBS, Fox, and NBC *for free, over the air in HD*. With Boxee Live TV you can watch them all on your Boxee Box (and still get all the regular Boxee stuff you love to watch too).⁴

In short, Boxee clearly contemplates that most of its customers will be accessing broadcast channels via an over-the-air antenna and without a cable subscription, which of course means that encryption of the cable basic tier will have no impact on those customers.

Boxee asserts that the transitional measures proposed in the NPRM are inadequate because they fail to “require that interim set-top boxes be compatible with Boxee’s device.”⁵ But the incompatibility of the Live TV product is a direct result of Boxee’s business decisions regarding the design of its device. Boxee elected not to support CableCARD in the device, regardless of cable industry support for CableCARD self-installation. As a result, Boxee’s product will be unable to access any encrypted cable services. Notwithstanding this self-imposed design limitation, Boxee now seeks a Commission “guarantee” of “free access to a device that will decrypt basic tier cable and provide a QAM output.”⁶ As Boxee presumably knows, cable set-top boxes do not output video in QAM, any more than DTV television broadcast stations, satellite, or telco TV delivers signals in clear QAM, and Boxee declined to include an RF or other standard input on its product that will work with cable set-top boxes. Compelling cable operators to develop a special solution for Boxee would be unreasonable in light of Boxee’s own product design decisions and unnecessary in light of the fact that its add-on adapter can access over-the-air broadcast signals.

Beyond the compatibility issue, Boxee also asks the Commission to expand the universe of consumers eligible for the free equipment promotions in order to advance Boxee’s own unique business interests. In particular, Boxee urges that free equipment be made available to consumers who come within Boxee’s “target market,” including: (1) subscribers to premium cable channels (like HBO or Showtime) and (2) consumers who do not subscribe to cable at all.⁷ However, neither group of consumers would be harmed by basic tier encryption. As to Boxee’s first proposal, cable customers who get premium channels already have set-top boxes or retail

⁴ See Avner Ronen, “Boxee Live TV is coming. Time to cut the cord,” available at <http://blog.boxee.tv/2011/11/16/boxee-live-tv-is-coming-time-to-cut-the-cord/> (Nov. 16, 2011) (“There is a better way for you to get TV . . . and we think Boxee with Live TV can deliver that promise. *We want Boxee to be your alternative to Cable TV.*” (emphasis added)).

⁵ Boxee Letter at 2.

⁶ *Id.* at 3.

⁷ *See id.*

CableCARD devices, so encryption of the basic tier would be a non-event for them.⁸ As to Boxee's second proposal, non-cable consumers would presumably use Boxee's off-air tuner to access broadcast signals rather than subscribe to cable service. In any event, such consumers would not be affected by basic tier encryption since they are not cable customers, and therefore would have no legitimate claims to the transitional measures.⁹

Boxee also asserts that no action should be taken on the encryption NPRM "absent the concurrent *adoption* of AllVid or a similar successor to CableCARD."¹⁰ But the AllVid proceeding (let alone adoption of a requirement for a "similar successor to CableCARD") does not appear to have any relevance to Boxee's situation. As noted, Boxee made the business judgment not to invest in CableCARD. If Boxee has no interest in spending the money to support CableCARD, it seems improbable that it would have any interest in any proposed successor technology to CableCARD, like AllVid. As noted, Boxee wants to sell a product that just provides access to over-the-air broadcast signals, not the wide array of non-broadcast content accessible with a CableCARD (or the proposed AllVid concept).¹¹

⁸ Contrary to Boxee's claims, *see id.*, cable operators do give cable customers the option of buying premium channels with only the basic service tier, consistent with the Commission's tier buy-through rules. *See* 47 C.F.R. § 76.921.

⁹ *See* NCTA Reply at 14 n.49. In late-filed comments, Hauppauge Computer Works claims that cable's transition to basic tier encryption will be one transition too many for consumers. *See* Hauppauge Computer Works Reply at 6-7 (Dec. 22, 2011) ("Hauppauge Reply"). But consumers have adjusted rapidly to the broadcast digital transition and to the digitization of analog cable. Those who adjusted to the broadcast digital transition with over-the-air digital-to-analog TV boxes will be unaffected. Those who rely on CableCARD-enabled devices, such as the ones Hauppauge supplies, will also be unaffected. The few consumers who now rely on clear-QAM TVs for basic-only service can use similar CableCARD-enabled devices, or use the transitional equipment which will be provided without charge by cable operators. More than one in three MVPD customers have been receiving the equivalent of the cable basic service tier on an encrypted basis from DBS and IPTV telco providers for years, and many more are now receiving IP video on entirely new devices. Consumers have clearly proven quite adept at adjusting to changes in technology. Moreover, Hauppauge itself has previously argued to the Commission that regulations should not limit the consumer benefits that accompany technological advances, especially when retention of an existing rule would provide few benefits to consumers. *See* Comments of Hauppauge Computer Works, Inc., MB Docket No. 10-111 (June 4, 2010) (supporting waiver of an "outmoded mandate" regarding analog tuners and noting that few consumers would benefit from retention of the rule). Finally, Hauppauge raises concerns over energy efficiency, *see* Hauppauge Reply at 5-6, but the transitional equipment that cable operators typically provide, such as DTAs, use very little power. *See* NCTA Reply at 12-13. The cable industry has also embarked on a wide-ranging energy efficiency initiative. *See* Jonathan Make, *Major Cable Operators Target Energy Star 3.0 Devices*, Comm. Daily (Nov. 21, 2011).

¹⁰ Boxee Letter at 1 (emphasis added).

¹¹ NCTA has explained in other contexts why AllVid regulations in the dynamic video marketplace would be misguided and would chill continued investment and innovation. *See, e.g.*, Letter from Kyle McSlarrow, President and CEO, NCTA, to Julius Genachowski, Chairman, FCC, MB Dkt. No. 10-91, CS Dkt. No. 97-80 (Jan. 26, 2011); Letter from Michael K. Powell, President and CEO, NCTA, to Julius Genachowski, Chairman, FCC, MB Dkt. No. 10-91, CS Dkt. No. 97-80 (July 7, 2011); Letter from Neal Goldberg, Vice President and General Counsel, NCTA, to Sherrese Smith, Senior Counsel & Legal Advisor to Chairman Genachowski, FCC, MB Dkt. No. 10-91, CS Dkt. No. 97-80 (Aug. 10, 2011); *see also* Letter from Kathryn A. Zachem, Senior Vice

Boxee's objections to the proposed rule change may be in Boxee's narrow business interest – reflecting concerns with its January product launch – but they do not serve the general public interest. A broad range of entities, including public interest and diversity groups, local communities, and large and small cable operators, all underscored the substantial consumer benefits that would flow from encryption of the basic service tier, such as remote service connections, fewer truck rolls, and reduced piracy.¹² Boxee is essentially asking the Commission to deny millions of consumers these benefits on an indefinite basis to protect a product that is still undergoing testing and does not have a single customer.¹³ Aside from harming consumers, Boxee's preferred approach would likely slow cable's transition to all-digital service and continue to place cable operators at a competitive disadvantage vis-a-vis their competitors. As NCTA previously noted in this docket, DBS and telco IPTV providers encrypt all of their programming, as do Netflix and other online video distributors (some of which are accessible on Boxee products).¹⁴

In light of the foregoing, the Commission should reject the proposals in Boxee's letter and proceed without undue delay to eliminate the encryption ban for all-digital cable systems.

Sincerely

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Sherrese Smith
William Lake
Mary Beth Murphy
Steven Broeckaert
Brendan Murray

President, Comcast Corporation, *et al.*, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67 (Oct. 17, 2011).

¹² See, e.g., Public Knowledge/Media Access Project Comments at 14; Minority Media and Telecommunications Council Comments at 3; Hispanic Technology & Telecommunications Partnership Comments at 1; City of Miami Reply Comments at 1; City of Hialeah Reply Comments at 1; Time Warner Cable Comments at 3-6; Comcast Comments at 4-8; BendBroadband Comments at 1-3; American Cable Association Comments at 2-5; MPAA Reply Comments at 2-3.

¹³ See Boxee Letter at 1 n.1.

¹⁴ See NCTA Comments at 4-5; see also Comcast Comments at 18 n.46; Cablevision Comments at 10-11. Boxee products enable access to Netflix and Vudu, among other online video distributors. See <http://www.boxee.tv/>.